

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHELLE ADELHARDT¹
Claimant

VS.

MENNONITE FRIENDSHIP MANOR
Respondent

AND

**KANSAS ASSOC. OF HOME FOR THE
THE AGING INSURANCE GROUP**
Insurance Carrier

Docket No. **1,055,819**

ORDER

Claimant requests review of the August 14, 2012, Award by Special Administrative Law Judge (SALJ) C. Stanley Nelson. The Board heard oral argument on January 23, 2013. The Workers Compensation's Director appointed E.L. "Lee" Kinch of Wichita, Kansas, to serve as Board Member Pro Tem in place of Thomas Arnhold, who recused himself from this proceeding.

APPEARANCES

Matthew L. Bretz of Hutchinson, Kansas, appeared for claimant. Michael L. Entz of Topeka, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the entire record and adopts the stipulations listed in the Award.

¹ Claimant is now married and her last name is Lytle.

ISSUES

The SALJ found claimant's average weekly wage (AWW) was \$330.83. He also found claimant sustained a 12.5% whole body functional impairment and was entitled to permanent partial disability benefits based on that percentage of impairment. Work disability benefits were denied because claimant was engaged in work for wages equal to 90% or more of the AWW claimant was earning when she was injured.

Claimant requests review of the following issues: (1) average weekly wage; (2) claimant's entitlement to temporary total disability compensation (TTD) and/or temporary partial disability compensation (TPD); (3) the nature and extent of claimant's disability; (4) claimant's entitlement to future medical treatment. Claimant also contends she is entitled to a work disability based on a 77.14% wage loss.

Respondent argues it is entitled to a credit for overpayment of TTD & TPD and that the ALJ's Award should otherwise be affirmed.

The issues the Board must review are:

1. Whether the SALJ erred in computing claimant's AWW.
2. Whether claimant was entitled to TTD or TPD and, if so, in what amount(s).
3. The nature and extent of claimant's disability.
4. Whether claimant is entitled to future medical treatment.
5. Whether respondent is entitled to a credit for overpayment of TTD and/or TPD.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings and conclusions of law:

When claimant sustained her accidental injury on March 19, 2011, she was employed by three employers:

(1) Sexual Assault Domestic Violence Center (SADVC), a part-time position which required her to monitor visits by noncustodial parents with their children in a safe environment. She performed some paperwork and used a laptop.

(2) Hutchinson Recreation Center (Hutchinson Rec.), where she worked as a full-time office manager. She performed a number of functions, including: supervision of other employees, computer work, taking registrations, assisting in signing up children for arts and sports programs, and hiring and organizing older students to teach the younger children.

(3) Mennonite Friendship Manor, where claimant worked as part-time CNA on a prn basis. She was required to provide hands-on patient care.

When she testified at the May 18, 2012, regular hearing, claimant was age 38. On March 19, 2011, she injured her back while assisting a co-employee attempt to clean up and clothe an uncooperative and bedridden patient. The compensability of the accidental injury was stipulated.

Claimant received conservative treatment and epidural steroid injections, followed by two operations, both performed by Dr. Christian Lothes. The first surgery was in June 2011, and consisted of a left-sided L5 hemilaminectomy and microdiscectomy. Claimant required another procedure in August 2011, that consisted of a left-sided laminotomy re-exploration and use of intraoperative microscope and microdissection. Claimant still experienced back pain and remains under medical treatment, including the use of pain medication and a muscle relaxant.

Based upon the fourth edition of the *AMA Guides*, Drs. Sandra Barrett and Pedro Murati, both specialists in physical medicine and rehabilitation, provided impairment ratings--Dr. Barrett, 10% to the whole person, and Dr. Murati, 15% to the whole person. The SALJ found claimant sustained a 12.5% permanent functional impairment to the whole body based on the average of the doctors' ratings.

On February 27, 2012, claimant commenced working 32 hours a week for Groendyke Transport. Claimant's probationary period at Groendyke ended on June 1, 2012, at which time she started receiving fringe benefits. After her injury, claimant continued to work part-time at SADVC and full-time for Hutchinson Rec. until she resigned on March 6, 2012.²

In his Award of August 14, 2012, the SALJ made detailed findings of fact that are accurate and supported by a preponderance of the credible evidence. It serves no purpose to repeat those findings here. The Board adopts the ALJ's findings. The Board concludes:

² R.H. Trans., Resp. Ex. A.

(1) Claimant's AWW is \$330.83. Claimant's argument that the wages of claimant's part-time position for respondent and her wages at her part-time position at SADVC should be combined to compute the AWW is without merit. The multiple employment wage aggregation authorized by K.S.A. 2010 Supp. 44-511(b)(7) applies only to workers employed in two or more part-time jobs which are the same or very similar in nature.³ In this claim, claimant was employed part-time for respondent and part-time for SADVC, however, the jobs are not the same or similar in nature.

(2) The record establishes claimant continued to work after her accidental injury and was paid more than her AWW. Neither TTD nor TPD are appropriate under these circumstances. Accordingly, claimant was overpaid TTD and TPD in the amount of \$8,550.34.⁴ Hence, claimant's PPD will be subject to all temporary compensation previously paid.

(3) Claimant's permanent functional impairment is 12.5% to the whole body. After her injury, claimant engaged in work for wages 90% or more of her gross average weekly wage and therefore her permanent partial disability benefits must be based on her functional impairment. Claimant is not entitled to work disability.

(4) Respondent remains responsible for claimant's continuing authorized treatment with Dr. Barrett. Beyond that, the parties must file the appropriate application with the Director and seek the approval of the ALJ.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁵ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, it is the Board's decision that the Award of SALJ C. Stanley Nelson dated August 14, 2012, is affirmed.

IT IS SO ORDERED.

³ *Wade v. Union Nat'l Bank*, 10 Kan. App. 2d 645, 707 P.2d 1087, *rev. denied* 238 Kan. 879 (1985).

⁴ Respondent did not stipulate to the TTD and TPD to which claimant was entitled, but only informed the ALJ and claimant's counsel what amounts had been paid in the claim.

⁵ K.S.A. 2011 Supp. 44-555c(k).

Dated this _____ day of February, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Matthew L. Bretz, Attorney for Claimant,
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C. Stanley Nelson, SALJ